

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
SITE INVESTIGATION & RESTORATION BRANCH

MEMORANDUM

TO: Marjorie A. Crofts, Acting Director, DAWM

THRU: Kathleen M. Stiller, Program Manager II, SIRB
Paul W. Will, Program Manager I, SIRB
Qazi Salahuddin, Program Manager I, SIRB
Tim Ratsep, Program Manager I, SIRB

FROM: James M. Poling, Brownfields Administrator

SUBJECT: Termination of the Brownfields Voluntary Cleanup Program

DATE: October 20, 2009

This memorandum and approval seeks to terminate the Brownfield Voluntary Cleanup Program (BFVCP). The memorandum addresses the concern for the practicality and legality of the BFVCP. The BFVCP was introduced in late 2005 and the first agreement was entered into on March 2, 2006. Since then there have been 18 BFVCP agreements out of a pool of 128 Brownfield Agreements. BFVCP agreements are a hybrid between Brownfield Development Agreement Agreements (BDAs) and Prospective Purchaser Agreements (PPAs). In brief, they offer full liability protections for past releases (BDAs), to parties that are otherwise liable due to current ownership of the property (PPAs) provided they remediate the site and obtain a Certificate of Completion of Remedy (PPAs).

These agreements offer equitable solutions to parties who owned a contaminated site but did not otherwise cause or contribute to the release(s) of hazardous substances. Their practicality became tenable after several applicants who applied for BFVCP agreements owned the property for many years at the time of intending to enter into the program but were willing to certify that they neither caused nor contributed to the contamination. This was handled by limiting the use of the BFVCP only to parties that became liable after June 30, 2004, thus limiting the time backwards and making the investigation of the site more manageable. This June 30, 2004 threshold date, however, will soon place the investigation in a similar tenable position.

Brownfield Voluntary Cleanup Program agreements have questionable legal authority as well. The Brownfields Development Program (BDP), 7 Del. C., Chapter 91 Subsection II, provides liability protection to brownfield developers who are otherwise not liable at the time of application into the program (§9123(1)b.). The BFVCP directly contradict this express provision.

Therefore, it is recommended that the use of the Brownfield Voluntary Cleanup Program and BFVCP agreements terminate as of December 31, 2010. This will provide the public and interested parties with sufficient time to ensure that they comply with the statute when intending to enter into the Brownfields Development Program.

Approved by:

Marjorie A. Crofts, Acting Director, DAWM

Date

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